IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1048 of 2005

Date of decision: 19.4.2007

State of H.P and others ..Petitioners

Versus

Smt. Bimla Devi ….Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting?

For the Petitioners: Mr. M.S.Chandel, Advocate General
With Mr. R.M.Bisht, Dy.A.G.

For Respondent No.1 : Mr. C.N.Singh, Advocate.

Per Deepak Gupta, J (Oral)

This writ petition by the State is directed against the award dated 26th April, 2005 passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, H.P. in reference No. 151 of 2001. The following reference was made to the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala by the State of H.P. :-

> "Whether the period between the termination of services and re-instatement i.e. August 1990 to November 1995 can be counted for the purpose of continuity of services by the Executive Engineer, IPH Division, Sunder Nagar, District Mandi, H.P, for the purpose of regularization and other benefits? As the workman Smt. Bimla Devi W/o Sh. Ramesh Gautam was terminated and further re-instated by above said officer."

The background of the case is that the petitioner was employed as Beldar on daily-wages some-time in 23.11.1982. She worked, as such, till 5.8.1990. According to the workman, Smt.

Bimla Devi, though she was employed as Beldar she was discharging the duties of clerk/typist-clerk. However, the management was harassing her and forcing her to do the duties of Beldar in the field and therefore, she could not attend her duties after 6.8.1990. Therefore, as per the workman, she could not attend her duties from the period 6.8.1990 to15.11.1995 when she was allowed to rejoin her duties pursuant to the directions of this Court in CWP No.427 of 1995. The workman claimed that the period between 1990 and 1995 to be considered as on duty and she also prayed for back-wages from 6.8.1990 to 15.11.1995.

The State contested the claim of the workman and it was submitted that no pressure was put on the workman and it was also stated that Bimla Devi has abandoned the work of her own on 6.8.1990 and therefore, she was not entitled to the benefit of regularisation or of back-wages for the period she did not work. The findings of the learned Tribunal are that there is no direct or indirect evidence on record to controvert the evidence of the petitioner that she was not victimised by the respondent-State deputing as Beldar in the field. The Tribunal has, therefore, held that the petitioner would be deemed to be in service between the period 6.8.1990 to 15.11.1995 for the purpose of seniority as daily-wager Baildar (clerical nature) though she shall not be entitled for wages for the said period.

Before adverting to the arguments raised by both the sides, it would be pertinent to mention that from the material on record it is apparent that the petitioner had first filed CWP No.250 of 1990 in this Court in which she alongwith other workmen had claimed that she be regularized in terms of the judgment of the apex Court in Mool Raj Upadhayaya vs. State of Himachal Pradesh and

others, 1994 (2) S.L.R. 377. It is the admitted case of the workman that the writ petition was disposed of with the direction to the State to consider the cases of the petitioner in the said writ petition for regularisation as per law. It is also admitted that since the workman had left the job on 6.8.1990 prior to the decision dated 29.11.1994 delivered in CWP No. 250 of 1990 she was not regularised in view of the fact that she had not completed 10 years service in the year 1990.

Thereafter, the petitioner filed CWP No. 427 of 1995 in this Court. In this writ petition the petitioner submitted that though in the earlier writ petition CWP No.250 of 1990 she had prayed that she be given clerical work only even when the said petition was pending, the respondent-State insisted that she should work in the field. She represented against such orders but in vain. Relevant portion of the averments made in the petition are as follows:-

> " Since, no order was passed on the stay application moved by the petitioner and the respondents were consistently insisting upon to her shifting to the Fields, there was no option left with the petitioner, but, to leave the job in August, 1990 with the respondents at that time with the hope that ultimately her case would be decided by this Hon'ble Court in the Writ petition No. 250/90."

In this writ petition, the petitioner prayed for the following amongst other reliefs :-

"(i) That the respondents may be directed to re-engage the petitioner as Clerk at the same place from where she was dis-engaged in August, 1990.

(ii) That the respondents may be directed to count the period from her dis-engagement in the year 1990 till her re-engagement as prayed for in prayer (i) for the purpose of seniority and other benefits,

> alone, and consequently keeping in view the decision in Mool Raj Upadhayay's case (1994 (2) SLR 377) the respondents may be directed to consider her case and grant her the due benefits as provided under the said decision."

This Court disposed of this writ petition by directing that the petitioner be taken back into service as Beldar. Keeping in view the fact that the petitioner was a lady and she had passed matriculation examination and had been rendering service of clerical nature, the respondents in the aforesaid writ petition were directed to assign work of clerical nature to the petitioner. After giving the relief the petition was disposed of in the following terms :-

> "In view of the above directions, we are not giving any decision to the other reliefs claimed by the petitioner and it is open for the petitioner to approach this Court again, if necessary."

It is clear that this Court did not give any decision on the other reliefs claimed. Liberty was left to the petitioner to approach this Court again, if necessary.

Instead of approaching this Court the petitioner moved the State Government for making a reference and such reference was made in the year 2001. We are of the view that this reference itself could not have been made since this Court had not given liberty to the petitioner to approach any other Court for the other reliefs claimed by her. Admittedly, she had claimed the benefit of regularisation and the benefit of past service in the petition filed before this Court. This Court had only directed that she can approach this Court again, if necessary. We are constrained to observe that though the Presiding Officer of the Labour Court has made reference to the order of this Court in Civil Writ Petition No.427 of 1995, it is apparent that he

did not care to go through the order. If he had done so, he would have noted that in the said case this Court had clearly observed that the petitioner had left the work of her own accord in the year 1990. If she had left the work of her own, where was the question of harassment by the respondent-management. Secondly, as observed above, this Court had not given liberty to the petitioner to approach any other forum in respect of the other claims preferred by her. She was only given liberty to again approach this Court. The learned Presiding Officer has gravely erred in answering the reference in favour of the petitioner and in holding that the petitioner was harassed.

The learned Presiding Officer has also totally mis-read and mis-appreciated the material on record. In fact, his approach itself was wrong. The apex Court has repeatedly held that it is for the workman to first prove his case. There was no material on record to show that the workman had been harassed. Assuming the case of the petitioner to be correct, the harassment alleged is that instead of getting clerical work done from her she was being forced to go to the field. This, in our considered opinion, is no harassment. She was employed as Beldar and she had no vested rights to work in the clerical field only. She could have joined the field work and could have raised a dispute before the appropriate forum that she should be assigned clerical work. She could not have left the job of her own account and then be permitted to complain after 10 years that she had been harassed and this period of five years be counted for the purpose of continuity in service.

The relief claimed by her in the reference had been claimed by her in the writ petitions filed before this Court. These reliefs had not been granted to her. She was only granted liberty to

approach this Court again and in our opinion the Presiding Officer of the Labour Court infract over-reached the orders of this Court by granting relief to her which she had not been granted by this Court. In the hierarchy of Courts, every Court in the State is bound by the orders of the High Court. No judicial officer should attempt to over reach the orders of the higher Courts. When this Court had clearly stated that the petitioner could approach this Court again, if necessary, there was no reason for the Labour Court to pass an award in her favour. Further, when this Court in CWP No. 427 of 1995 had clearly stated that the workman had left the work of her own, how could the Presiding Judge of the Labour Court hold otherwise. We are of the view that the order of the learned Labour Court is arbitrarily, erroneous and illegal and liable to be set-aside. The writ petition is accordingly allowed. The order of the Labour Court dated 26.4.2005 in reference No. 152 of 2001 is quashed and set-aside

(Deepak Gupta), J.

April 19, 2007 (Surinder Singh), J.
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